

FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

October 31, 2005

In Reply Refer To:  
Reliant Energy Services, Inc.  
Docket Nos. EL03-59-003  
EL03-59-004  
IN03-10-000  
PA02-2-000

Reliant Energy Services, Inc.  
1299 Pennsylvania Avenue, NW  
Washington, DC 20004-2400

Attention: Wendy B. Warren  
Baker Botts L.L.P.

Reference: Motion for Waiver and Modification and Request for Expedited  
Consideration

Dear Ms. Warren:

1. In this order, the Commission grants waiver and modification of Article IV, section 4 of the Stipulation and Consent Agreement (Agreement) between the Staff of the Division of Enforcement, Office of Market Oversight and Investigations (OMOI) and Reliant Energy Services, Inc., Reliant Energy Coolwater, Inc., Reliant Energy Ellwood, Inc., Reliant Energy Etiwanda, Inc., Reliant Energy Mandalay, Inc., and Reliant Energy Ormond Beach, Inc. (collectively, Reliant).<sup>1</sup>

2. The Agreement resolved all outstanding issues with respect to Reliant arising from the investigation in Docket No. PA02-2-000, including issues in the Final Report on Price Manipulation in Western Markets issued in Docket No. PA02-2-000 and the Fact-Finding Investigation of entities that Controlled Generators Selling into the California Market, in

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<sup>1</sup> In an October 2, 2003 order, the Commission approved the Agreement, *Reliant Energy Services, Inc., et al.*, 105 FERC ¶ 61,008 (2003) (October 2 Order). In *Reliant Energy Services, Inc., et al.*, 105 FERC ¶ 61,253 (2003), the Commission dismissed a request for rehearing filed by an entity other than Reliant, explaining that there are no parties to the enforcement action and requests for rehearing would not lie.

Docket No. EL03-59-000 and in Docket No. IN03-10-000, relating to staff's investigation of anomalous bidding.

3. Pursuant to Article IV, section 4 of the Agreement, Reliant is required to auction the capacity from certain gas-fired electric generation facilities, located in California, for three twelve-month periods. The subject facilities include Reliant's Ellwood Unit and Mandalay unit 3. The Agreement established a minimum contract price for each unit or group of units from which Reliant would be offering the capacity, based on the projected costs of keeping the units in service. To the extent that bids are received and capacity is awarded from the subject units, including the Ellwood Unit and Mandalay Unit 3, at prices above the minimum contract price, the differential (Net Value) up to a maximum of \$25 million, is to be paid into a Deposit Fund established by the United States Treasury on behalf of the Commission and Western electricity customers. The Agreement provides that the auctions will continue for three calendar years or until the Net Value reached \$25 million. Reliant conducted the first auction in October 2003 in compliance with the terms of the Agreement. No bids were received in that auction.

4. On September 7, 2004, as supplemented September 9, 2004, Reliant submitted a request for partial waiver and modification of Article IV, section 4 of the Agreement with regard to the auction requirements. Reliant explained that it had entered into a Must-Run Service Agreement (RMR Contract) with the California Independent System Operator Corporation (CAISO) for Etiwanda Units 3 and 4 for an initial term through the end of 2004 and had entered into a long-term bilateral contract with Southern California Edison (SoCal Edison) pursuant to which SoCal Edison would purchase the capacity of Etiwanda Units 3 and 4 (SoCal Edison Contract). The effectiveness of the SoCal Edison Contract was conditioned on the Commission granting partial waiver of Article IV, section 4 of the Agreement. Reliant further requested a modification to delay the second auction for its Mandalay and Ellwood units until January 2005, so that it could continue to pursue efforts to secure bilateral contracts for the output of those units. On September 22, 2004, the Commission issued an order granting Reliant's request.<sup>2</sup>

5. Consistent with the modification to the Agreement approved by the Commission in its September 2004 Order, Reliant conducted the second auction for the Mandalay and Ellwood units in January 2005. Again, no bids were received. On February 11, 2005, Reliant informed the Commission that Reliant had entered into bilateral contracts for the output of the Mandalay and Ellwood units with California load-serving entities. These agreements expire on December 31, 2005.

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<sup>2</sup> *Reliant Energy Services, Inc, et al.*, 108 FERC ¶ 61,278 (2004) (September 2004 Order).

6. On September 7, 2005, Reliant filed a motion requesting another extension of time, waiver and modification with respect to, *inter alia*, the Ellwood Unit and Mandalay Unit 3. Specifically, Reliant requested deferral of the required auction of the Ellwood Unit until January 31, 2006, in light of the opportunity to bilaterally contract for the output of the units on a long-term basis with a load-serving entity in California. Reliant requested the extension of time from auction procedures with respect to the Mandalay Unit because the capacity from that unit was still under contract and would be until December 31, 2005.

7. Subsequently, on October 11, 2005, Reliant filed a motion with the Commission indicating that it had now entered into contracts with California load-serving entities for a term that would commence in May 2006, with respect to the Ellwood Unit, and January 2006, with respect to Mandalay Unit 3. Consequently, Reliant requests that the Commission relieve it from the auction requirement with respect to the Ellwood and Mandalay units. Reliant states that the term of these contracts would end after the expiry of the next auction requirement. Reliant believes that, if the Commission grants the instant request, the limited request for waiver filed by Reliant on September 7, 2005 would become moot as would the request for extension of time with respect to the Mandalay unit.

8. Now that Reliant has entered into contracts with load-serving entities in California, the purpose of the auction requirement has been satisfied. Reliant's entering into contracts with California load-serving entities would increase the likelihood of payment of the full Net Value. Furthermore, Reliant represents that the expected benefit of the auction under the Agreement, including net value to the Deposit Fund, will now be realized pursuant to the contracts with the California load-serving entities.<sup>3</sup> These funds are designated for ultimate distribution for the benefit of California and western electricity customers. In these circumstances, we conclude that Reliant's request should be approved. For good cause shown, the Commission grants Reliant's request for request for waiver and modification of Article IV, section 4 of the Agreement.

By direction of the Commission.

Magalie R. Salas,  
Secretary.

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<sup>3</sup> At page 4 of its October 11, 2005 filing, Reliant indicates that it is likely that, by the end of the first quarter of 2006, the entire \$25 million of the Net Value will have been paid into the deposit fund.